

Regulations 1584

Section 100

Complete Rule Making File

OAL Approval with Approved Text Regulation 1584

Index

1. *Form 400 and Proposed Regulation 1584*
2. *Statement of Explanation*

Other Documents Relied upon

- A. *Chief Counsel Memo Dated 03/04/10*
- B. *Approved Minutes, 03/25/10*
- C. *BOE "Section 100 Change" Recommendation*
- D. *Reporters Transcript, 03/25/10*

**State of California
Office of Administrative Law**

In re:

Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1584

Repeal sections:

NOTICE OF APPROVAL OF CHANGES
WITHOUT REGULATORY EFFECT

California Code of Regulations, Title 1,
Section 100

OAL File No. 2010-0406-01 N

RECEIVED

MAY 14 2010

by EXECUTIVE DIRECTOR'S OFFICE
STATE BOARD OF EQUALIZATION

This change without regulatory effect deletes subdivision (c) of section 1584 which states "The provisions of this regulation are operative January 1, 1996" because all of the reporting periods that began prior to January 1, 1996, ended more than 14 years ago, the Board does not expect to issue any new notices of determination or receive any new claims for refund for those reporting periods because of statutory deadlines, and therefore, the reporting periods are closed for all material regulatory purposes.


OAL approves this change without regulatory effect as meeting the requirements of California Code of Regulations, Title 1, section 100.

Date: 5/13/2010

RECEIVED

MAY 17 2010

Board Proceedings


Debra M. Cornez
Assistant Chief Counsel

For: SUSAN LAPSLEY
Director

Original: Ramon Hirsig
Copy: Richard Bennion


OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826



SUSAN LAPSLEY
Director

MEMORANDUM

TO: Richard Bennion
FROM: OAL Front Desk 
DATE: 5/19/2010
RE: Return of Approved Rulemaking Materials
OAL File No. 2010-0406-01N

OAL hereby returns this file your agency submitted for our review (OAL File No. 2010-0406-01N regarding Membership Fees).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION REGULATION

SUBMISSION

(See instructions on reverse)

on

For use by Secretary of State only

STD. 400 (REV. 01-09)

NOTICE FILE NUMBER

Z-

REGULATORY ACTION NUMBER

2010-0406-01N

EMERGENCY NUMBER

For use by Office of Administrative Law (OAL) only

ENDORSED FILED
IN THE OFFICE OF

2010 MAY 13 PM 1:19

2010 APR -6 AM 8:50

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)		FIRST SECTION AFFECTED		2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER		FAX NUMBER (Optional)	
OAL USE ONLY		ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Membership Fees		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
		AMEND 1584	
TITLE(S) 18		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
		E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Diane G. Olson, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 13 2010

Office of Administrative Law

**Text of Proposed Changes to
Title 18. Public Revenue**

Regulation 1584. Membership Fees.

(a) Application of Tax.

(1) . . . (unchanged.)

(A) . . . (unchanged.)

(B) . . . (unchanged.)

(2) . . . (unchanged.)

(3) . . . (unchanged.)

(4) . . . (unchanged.)

(b) Nominal Amount.

(1) . . . (unchanged.)

(2) . . . (unchanged.)

~~(c) Operative Date. The provisions of this regulation are operative January 1, 1996.~~

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1584. Membership Fees.

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 1584, *Membership Fees*, became effective on August 2, 1996. However, the Board's regulations are presumed to be retroactive and "The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect." Therefore, the Board included subdivision (c) in the original text of the regulation to limit the regulation's retroactive effect and specify that "The provisions of this regulation are operative January 1, 1996."

Now, Regulation 1584, subdivision (c), is obsolete because all of the quarterly and annual reporting periods that began prior to January 1, 1996, which were originally effected by subdivision (c)'s January 1, 1996, operative date, ended more than 14 years ago. For example, the most recent reporting period to begin prior to subdivision (c)'s operative date, the reporting period for the fourth quarter of 1995, began on October 1, 1995, and ended on December 31, 1995, more than 14 years ago.

Furthermore, the Board does not expect to issue any new assessments or receive any new claims for refunds for reporting periods that began prior to January 1, 1996. In general, when a timely return is filed for a particular reporting period, the Board must issue a notice of determination for any under-reported tax for that reporting period within three years from the due date of the return. If a timely return is not filed for a particular reporting period, the Board must issue a notice of determination for any unreported tax within eight years from the due date of the return for that reporting period. (Rev. & Tax. Code, § 6487.) For example, if a taxpayer filed a timely return for the fourth quarter of 1995 by the January 31, 1996, due date, the Board would have had to issue a notice of determination by January 31, 1999, to assess any amounts the taxpayer under-reported on its return and the fourth quarter of 1995 would be closed for purposes of assessment after that date. If a taxpayer failed to file a return for the fourth quarter of 1995 by the January 31, 1996, due date, the Board would have had to issue a notice of determination by January 1, 2004, to assess any amounts the taxpayer failed to report for the fourth quarter of 1995 or the fourth quarter of 1995 would be closed for purposes of assessment after that date. Therefore, the Board does not expect to issue any new notices of determination for reporting periods that began prior to January 1, 1996, and these reporting periods are now closed for purposes of assessment.

In addition, the Board can only grant refunds of overpayments if a timely claim for refund is filed within the later of:

- Three years after the due date of the return for which the overpayment was made;

- Six months from the date of the overpayment or, if the overpayment was collected through levies, liens, or other enforcement procedures, three years from the date of the overpayment; or
- Six months after the date a determination became final for overpayments made pursuant to a determination. (Rev. & Tax. Code, §§ 6902 and 6902.3.)

For example, a claim for refund for amounts paid with a timely filed return for the fourth quarter of 1995 would have been due by January 31, 1998. A timely claim for refund for amounts paid on January 1, 1998, to cover unpaid liabilities that were reported on a timely filed deficiency return for the fourth quarter of 1995 would have been due by July 1, 1998, however, if the January 1, 1998, payment was collected through the use of enforcement procedures, the claim for refund would have been due by January 1, 2001. Finally, if the Board issued a notice of determination for under-reported or unreported tax for the fourth quarter of 1995, the taxpayer filed a timely petition for redetermination, and the taxpayer made payments on the determination before it became final on January 1, 2001, then a claim for refund for any payment made in response to the determination would have been due by July 1, 2001. Therefore, the Board does not expect to receive any new timely claims for refund related to payments for reporting periods that began prior to January 1, 1996, and the Board has determined that it is no longer necessary for Regulation 1584 to specify that it was not operative before January 1, 1996.

As a result, the State Board of Equalization (Board) proposes to delete Regulation 1584, subdivision (c), pursuant to California Code of Regulations, title 1, section (Rule) 100. The Board has determined that the change deleting Regulation 1584, subdivision (c), is appropriate for processing under Rule 100 because it does not have any regulatory effect and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. This is because all of the reporting periods that began prior to January 1, 1996, ended more than 14 years ago, the Board does not expect to issue any new notices of determination or receive any new claims for refund for those reporting periods, and the reporting periods are therefore closed for all material regulatory purposes.

B. Proposed Change to Regulation 1584

Regulation 1584. Membership Fees.

(a) Application of Tax.

(1) ... (unchanged.)

(A) ... (unchanged.)

(B) ... (unchanged.)

(2) ... (unchanged.)

(3) ... (unchanged.)

(4) ... (unchanged.)

(b) Nominal Amount.

(1) . . . (unchanged.)

(2) . . . (unchanged.)

~~(c) Operative Date. The provisions of this regulation are operative January 1, 1996.~~

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, Revenue and Taxation Code.

("OBD") systems on used 2010 and subsequent heavy duty engines, amends the OBD regulation that specifies the required capabilities of OBD systems installed in passenger cars, light duty trucks, and medium duty vehicles, and updates the regulation that specifies the emission standards pertinent to OBD systems and other requirements applicable to 2010 and subsequent heavy-duty engines.

Title 13
California Code of Regulations
ADOPT: 1971.5 AMEND: 1968.2, 1971.1
Filed 05/18/2010
Effective 06/17/2010
Agency Contact: Amy Whiting (916) 322-6533

File# 2010-0407-01
BOARD OF EQUALIZATION
Innocent Spouse or Registered Domestic Partner Relief from Liability

The State Board of Equalization adopted sections 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106 and 4903 in title 18 of the California Code of Regulations to provide for relief for innocent spouses and registered domestic partners from liability under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Law, or Fuel Tax Law.

Title 18
California Code of Regulations
ADOPT: 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903
Filed 05/18/2010
Effective 06/17/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0406-01
BOARD OF EQUALIZATION
Membership Fees

This change without regulatory effect deletes subdivision (c) of section 1584 which states "The provisions of this regulation are operative January 1, 1996" because all of the reporting periods that began prior to January 1, 1996, ended more than 14 years ago, the Board does not expect to issue any new notices of determina-

tion or receive any new claims for refund for those reporting periods because of statutory deadlines, and therefore, the reporting periods are closed for all material regulatory purposes.

Title 18
California Code of Regulations
AMEND: 1584
Filed 05/13/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0406-02
BOARD OF EQUALIZATION
Reporting Methods for Grocers

Sections 1602.5 and 1700 of title 18 contain examples for calculating applicable tax using a 6% tax rate. This change without regulatory effect replaces the outdated 6% tax rate, which currently does not apply anywhere in California, with an 8.25% tax rate in the examples for calculating applicable tax.

Title 18
California Code of Regulations
AMEND: 1602.5, 1700
Filed 05/13/2010
Agency Contact:
Richard Bennion (916) 445-2130

File# 2010-0415-07
BUREAU OF AUTOMOTIVE REPAIR
Motor Vehicle Inspection Program Definitions

This Section 100 change without regulatory effect amends the existing Motor Vehicle Inspection Program definitions regulation by rearranging the definitions into alphabetical order.

Title 16
California Code of Regulations
AMEND: 3340.1
Filed 05/19/2010
Agency Contact: Steven Hill (916) 255-2135

File# 2010-0330-01
CALIFORNIA EMERGENCY MANAGEMENT AGENCY
Office of Emergency Services — Change of Agency Name and Corrections

This change without regulatory effect implements Assembly Bill 38, Chapter 372, of 2008. Assembly Bill 38 changed the name of the agency from the Office of Emergency Services (OES) to the California Emergency Management Agency (Cal EMA) and changed the title of the head of the agency from Director to Secretary. This change without regulatory effect also made corrective grammar, spelling, alphabetizing, cross-reference, Authority and Reference Citation, and punctua-

Regulation 1584

Section 100

Index

1. *Form 400 and Proposed Regulation 1584*
2. *Statement of Explanation*

NOTICE PUBLICATION/REGULATORY ACTION

SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2010-0406-01N	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		
NOTICE AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization		REGULATIONS AGENCY FILE NUMBER (If any)

2010 APR -6 AM 8:40
OFFICE OF
ADMINISTRATIVE LAW

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Membership Fees		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 18		AMEND 1584	
		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))			
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)			
<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____			
<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Richard E. Bennion		TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984 E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Diane G. Olson, Chief, Board Proceedings Division

For use by Office of Administrative Law (OAL) only

Text of Proposed Changes to

Title 18. Public Revenue

Regulation 1584. Membership Fees.

(a) Application of Tax.

(1) . . . (unchanged.)

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(2) . . . (unchanged.)

~~(c) Operative Date. The provisions of this regulation are operative January 1, 1996.~~

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, Revenue and Taxation Code.

CHANGES WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF REGULATIONS, TITLE 1, SECTION 100

Statement of Explanation

Changes to Title 18. Public Revenue

Regulation 1584. Membership Fees.

A. Factual Basis

California Code of Regulations, title 18, section (Regulation) 1584, *Membership Fees*, became effective on August 2, 1996. However, the Board's regulations are presumed to be retroactive and "The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect." Therefore, the Board included subdivision (c) in the original text of the regulation to limit the regulation's retroactive effect and specify that "The provisions of this regulation are operative January 1, 1996."

Now, Regulation 1584, subdivision (c), is obsolete because all of the quarterly and annual reporting periods that began prior to January 1, 1996, which were originally effected by subdivision (c)'s January 1, 1996, operative date, ended more than 14 years ago. For example, the most recent reporting period to begin prior to subdivision (c)'s operative date, the reporting period for the fourth quarter of 1995, began on October 1, 1995, and ended on December 31, 1995, more than 14 years ago.

Furthermore, the Board does not expect to issue any new assessments or receive any new claims for refunds for reporting periods that began prior to January 1, 1996. In general, when a timely return is filed for a particular reporting period, the Board must issue a notice of determination for any under-reported tax for that reporting period within three years from the due date of the return. If a timely return is not filed for a particular reporting period, the Board must issue a notice of determination for any unreported tax within eight years from the due date of the return for that reporting period. (Rev. & Tax. Code, § 6487.) For example, if a taxpayer filed a timely return for the fourth quarter of 1995 by the January 31, 1996, due date, the Board would have had to issue a notice of determination by January 31, 1999, to assess any amounts the taxpayer under-reported on its return and the fourth quarter of 1995 would be closed for purposes of assessment after that date. If a taxpayer failed to file a return for the fourth quarter of 1995 by the January 31, 1996, due date, the Board would have had to issue a notice of determination by January 1, 2004, to assess any amounts the taxpayer failed to report for the fourth quarter of 1995 or the fourth quarter of 1995 would be closed for purposes of assessment after that date. Therefore, the Board does not expect to issue any new notices of determination for reporting periods that began prior to January 1, 1996, and these reporting periods are now closed for purposes of assessment.

In addition, the Board can only grant refunds of overpayments if a timely claim for refund is filed within the later of:

- Three years after the due date of the return for which the overpayment was made;

- Six months from the date of the overpayment or, if the overpayment was collected through levies, liens, or other enforcement procedures, three years from the date of the overpayment; or
- Six months after the date a determination became final for overpayments made pursuant to a determination. (Rev. & Tax. Code, §§ 6902 and 6902.3.)

For example, a claim for refund for amounts paid with a timely filed return for the fourth quarter of 1995 would have been due by January 31, 1998. A timely claim for refund for amounts paid on January 1, 1998, to cover unpaid liabilities that were reported on a timely filed deficiency return for the fourth quarter of 1995 would have been due by July 1, 1998, however, if the January 1, 1998, payment was collected through the use of enforcement procedures, the claim for refund would have been due by January 1, 2001. Finally, if the Board issued a notice of determination for under-reported or unreported tax for the fourth quarter of 1995, the taxpayer filed a timely petition for redetermination, and the taxpayer made payments on the determination before it became final on January 1, 2001, then a claim for refund for any payment made in response to the determination would have been due by July 1, 2001. Therefore, the Board does not expect to receive any new timely claims for refund related to payments for reporting periods that began prior to January 1, 1996, and the Board has determined that it is no longer necessary for Regulation 1584 to specify that it was not operative before January 1, 1996.

As a result, the State Board of Equalization (Board) proposes to delete Regulation 1584, subdivision (c), pursuant to California Code of Regulations, title 1, section (Rule) 100. The Board has determined that the change deleting Regulation 1584, subdivision (c), is appropriate for processing under Rule 100 because it does not have any regulatory effect and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. This is because all of the reporting periods that began prior to January 1, 1996, ended more than 14 years ago, the Board does not expect to issue any new notices of determination or receive any new claims for refund for those reporting periods, and the reporting periods are therefore closed for all material regulatory purposes.

B. Proposed Change to Regulation 1584

Regulation 1584. Membership Fees.

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(1) . . . (unchanged.)

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Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011.1, 6012 and 6012.1, Revenue and Taxation Code.

M e m o r a n d u m

To : Mr. Ramon J. Hirsig
Executive Director, MIC:73

Date: March 4, 2010

From : Kristine Cazadd, Chief Counsel
Legal Department, MIC:83

Subject : Board Meeting — March 25, 2010
Item J
Chief Counsel's Rulemaking Calendar
Regulation 1584, *Membership Fees*

Sales and Use Tax Regulation 1584, *Membership Fees*, became effective on August 2, 1996, but the Board specified that the regulation was operative as of January 1, 1996, in subdivision (c). However, subdivision (c) is now obsolete and should be deleted because periods that began prior to January 1, 1996, are closed for purposes of both assessments and refunds. Therefore, we request your approval to place the proposed deletion of subdivision (c) on the Chief Counsel's Rulemaking Calendar for March 25, 2010, for Board authorization to amend the regulation under Rule 100, without the normal notice and public hearing process. The change is appropriate for processing under Rule 100 because it deletes obsolete information from the regulation.

Attached is a strikeout and underline version of Regulation 1584 showing the deletion of subdivision (c).

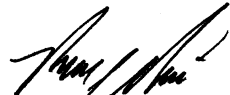
If you have any questions regarding this request, please let me know or contact Mr. Bradley Heller at 324-2657.

Recommendation by:



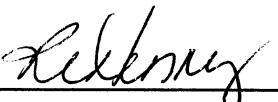
Kristine Cazadd, Chief Counsel

Approved:



Ramon J. Hirsig, Executive Director

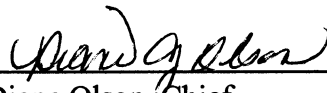
Approved:



Randie L. Henry, Deputy Director
Sales and Use Tax Department

BOARD APPROVED

At the 3/25/10 Board Meeting



Diane Olson, Chief
Board Proceedings Division

Attachments

cc (all with attachments):

Ms. Randie L. Henry (MIC 43)

Ms. Diane Olson (MIC 80)

Mr. Randy Ferris (MIC 82)

Mr. Bradley Heller (MIC 82)

Mr. Jeffrey L. McGuire (MIC 92)

Mr. Geoffrey E. Lyle (MIC 50)

Ms. Leila Hellmuth (MIC 50)

Ms. Lynn Whitaker (MIC 50)

Regulation 1584. MEMBERSHIP FEES.

Reference: Sections 6011.1, 6012, and 6012.1 Revenue and Taxation Code.

(a) APPLICATION OF TAX

(1) IN GENERAL. Membership fees related to the anticipated retail sale of tangible personal property are includible in taxable gross receipts when either

(A) the retailer sells its products only to members and the membership fee exceeds a nominal amount,

or

(B) regardless of the amount of the membership fee, the retailer sells its products for a lower price to a person who has paid the membership fee than to a person who has not paid the fee.

(2) The membership fees described in subdivision (a)(1)(A) or (a)(1)(B) are part of the gross receipts of the person selling tangible personal property to a member. It is immaterial that the person who sold the membership is not the person who sells the tangible personal property to a member. Any sale of a membership described in subdivision (a)(1)(A) or (a)(1)(B) is regarded as related to the retail sale by the retailer selling tangible personal property to a member, not by the person selling the membership, measured by the amounts received by the person selling the membership.

(3) INCIDENTAL SALES. Charges for memberships not related to anticipated retail transactions are not subject to tax. For example, when a country club or similar organization charges fees (dues) to members and provides substantial service benefits, e.g., the use of golfing, tennis and swimming facilities, the membership fees are not related to sales even though the organization may establish minimum meal and drink purchase requirements for its members.

(4) CONSUMER COOPERATIVES. Initial or periodic membership fees received by consumer cooperatives, as defined in sections 6011.1 and 6012.1 of the Revenue and Taxation Code, are not subject to tax.

(b) NOMINAL AMOUNT.

(1) For purposes of this regulation, beginning January 1, 2006, the term "nominal amount" means an amount totaling \$50 or less per year subject to increase as provided in subdivision (b)(2). For periods from January 1, 2001 through December 31, 2005, the term "nominal amount" for purposes of this regulation means an amount totaling \$45 or less per year. For periods prior to January 1, 2001, the term "nominal amount" for purposes of this regulation meant an amount totaling \$40 or less per year. Amounts received for memberships which are in conjunction with a basic membership (add-ons) are not considered a part of the basic membership fee in determining the nominal amount of the basic membership. Additional cards issued under the same membership number are sales of separate memberships.

(2) During September in the year 2000, and every five years thereafter, the threshold for the nominal amount will be adjusted effective the following January 1, rounded to the nearest \$5, to reflect changes in the California Consumer Price Index (CCPI) whenever that change is more than 5 percent higher than any previous adjustment. For purposes of computing the CCPI increase, the June 30 CCPI index of the computation year will be compared with the June 30 CCPI index of the computation year which resulted in an adjusted nominal amount. For example, for the January 1, 2011 adjustment computation, the CCPI index on June 30, 2010, will be compared with the CCPI index on June 30, 2005. If no adjustment is made at that time, the next comparison will be of the CCPI index on June 30, 2015 with the CCPI index on June 30, 2005.

~~(c) OPERATIVE DATE. The provisions of this regulation are operative January 1, 1996.~~

Thursday, March 25, 2010

Action: Upon motion of Ms. Mandel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

CHIEF COUNSEL MATTERS

RULEMAKING

Section 100 Changes

Sales and Use Tax Regulation 1525.7, *Rural Investment Tax Exemption*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to repeal Regulation 1525.7 based on the repeal of Revenue and Taxation Code section 6378.1 by its own terms effective January 1, 2006. (Exhibit 3.6.)

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board authorized the repeal of Regulation 1525.7 as recommended by staff.

Exhibits to these minutes are incorporated by reference.

Sales and Use Tax Regulation 1584, *Membership Fees*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to delete obsolete reference to the operative date of January 1, 1996. (Exhibit 3.7.)

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board authorized the amendment as recommended by staff.

Sales and Use Tax Regulation 1602.5, *Reporting Methods for Grocers*

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to update the tax rates used in the example included in the regulation. (Exhibit 3.8.)

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board authorized the amendment of examples in the regulation as recommended by staff.

BOARD OF EQUALIZATION
REGULATORY ACTION IN ACCORDANCE
WITH OAL SECTION 100 (CHANGE WITHOUT REGULATORY EFFECT)

RULE/REG 1584

REASON FOR CHANGE (check those applicable)

- ☐ renumbering, reordering, or relocating regulatory provision
- ☐ deleting regulatory provision for which all statutory or constitutional authority has been repealed
- ☐ deleting regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a US District Court located in the State of California, the US Court of Appeals for the Ninth Circuit, or the US Supreme Court
- ☒ revising structure, syntax, cross-reference, grammar, or punctuation (date crossed out)
- ☐ changing an "authority" or "reference" citation
- ☐ making consistent with changed California statute if (A) provision is inconsistent with and superseded by changed statute; and (B) Board has no discretion to adopt a change which differs in substance from this proposal
- ☐ changing without regulatory effect, not otherwise described above

Therefore, I recommend that these amendments be submitted to OAL as a change without regulatory effect and without public hearing.

Prepared by *John Whitaker* Date 1-12-10

Approvals
Division Chief *[Signature]* Date 2/22/10
Deputy Director *[Signature]* Date 2-23-10
Assistant Chief Counsel *[Signature]* Date 2/24/10
Chief Counsel *[Signature]* Date 2/24/10
Chief, Board Proceedings *[Signature]* Date 3/2/10

INSTRUCTIONS:

After approval, forward to next on list. In the event of disapproval, return to preparer.

Section 100. Publication of "Changes Without Regulatory Effect."

(a) Subject to the approval of OAL as provided in subsections (c) and (d), an agency may add to, revise or delete text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. The addition, revision or deletion is a "change without regulatory effect." Changes without regulatory effect include, but are not limited to:"

- (1) renumbering, reordering, or relocating a regulatory provision;
- (2) deleting a regulatory provision for which all statutory or constitutional authority has been repealed;
- (3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a United States District Court located in the State of California, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court; however, OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;
- (4) revising structure, syntax, cross-reference, grammar, or punctuation;
- (5) changing an "authority" or "reference" citation for a regulation; and,
- (6) making a regulatory provision consistent with a changed California statute if both the following conditions are met:
 - (A) the regulatory provision is inconsistent with an superseded by the changed statute, and
 - (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

(b) In submitting a change without regulatory effect to OAL for review the agency shall:

- (1) submit seven copies of the regulation with an addition shown in underline or italics and a deletion shown in strike-out; and
- (2) attach to each copy a completed Form 400, with at least one Form 400 bearing an original signature; and
- (3) submit a written statement explaining why the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

(c) OAL shall determine whether a change submitted is a change without regulatory effect within 30 working days of its receipt. OAL shall send written notification of the determination to the agency which submitted the changes.

(d) If OAL determines that the submitted change is a change without regulatory effect, OAL shall file it with the Secretary of State and have it published in the California Code of Regulations.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MARCH 25, 2010

ITEM J

SECTION 100 CHANGES

J1 SALES AND USE TAX REGULATION 1525.7

J2 SALES AND USE TAX REGULATION 1584

J3 SALES AND USE TAX REGULATION 1602.5

J4 SALES AND USE TAX REGULATION 1700

Reported by: Juli Price Jackson

No. CSR 5214

P R E S E N T

For the Board
of Equalization:

Betty T. Yee
Chair

Jerome E. Horton
Vice-Chair

Barbara Alby
Acting Member

Michelle Steel
Member

Marcy Jo Mandel
Appearing for John
Chiang, State Controller
(per Government Code
Section 7.9)

Diane G. Olson
Chief, Board
Proceedings Division

---oOo---

450 N STREET
SACRAMENTO, CALIFORNIA
MARCH 25, 2010

---oOo---

MS. YEE: Okay, our next matter?

MS. OLSON: Our next matter is J1, Sales and
Use Tax Regulation 1525.7, Rural Investment Tax
Exemption.

MS. STEEL: Go through all the Js together?

MS. YEE: Yeah, I think so.

Good morning, Mr. Heller.

MR. HELLER: Good morning, Madam -- excuse me,
Madam Chair, Members of the Board.

My name's Bradley Heller. I'm here with the
Legal Department.

MS. YEE: Okay.

MR. HELLER: And before I begin, I just wanted
to note that Ms. Steel had asked staff to review the
Board's sales and use tax regulations to insure that
they're current and recommend any necessary updates.

And today's proposed Rule 100 changes, as well
as the Rule 100 changes from January, are the result of
that review and staff's recommendations.

MS. YEE: Excellent, great.

MR. HELLER: But, first of all, for item J1
this morning, I'm here to request the Board's
authorization to repeal Regulation 1525.7, the Rural
Investment Tax Exemption, under Rule 100, because the

1 statutory authority for the regulation, Revenue and
2 Taxation Code Section 6378.1 was repealed by its own
3 terms effective January 1, 2006.

4 MS. YEE: Okay. Let me -- without objection,
5 Members -- have you summarize each of these.

6 I think we'll take them all up on one vote.

7 MR. HELLER: Perfect.

8 MS. YEE: Thank you.

9 MR. HELLER: And then for item J2, we're here
10 to request the Board's authorization to delete
11 subdivision (c) from Regulation 1584, Membership Fees,
12 under Rule 100 because the January 1, 1996 operative
13 date is no longer necessary.

14 For item J3, I am here to request the Board's
15 authorization to update the example in Regulation
16 1602.5, Reporting Methods for Grocers, illustrating the
17 application of the purchase -- excuse me, purchase ratio
18 method to use a current tax rate, also under Rule 100.

19 Then similarly for item J4, I am here to
20 request the Board's authorization to update the examples
21 in Regulation 1700, Reimbursement for Sales Tax,
22 illustrating the application of tax to discounts and
23 trading stamps to use a current tax rate, also under
24 Rule 100.

25 MS. YEE: Okay. Thank you very much,
26 Mr. Heller.

27 Comments, Members?

28 Hearing none, is there a motion?

1 MS. STEEL: So moved.

2 MS. YEE: Motion by Ms. Steel --

3 MR. HORTON: Second.

4 MS. YEE: -- second by Mr. Horton.

5 Without objection, the motion carries to
6 request authorization for each of the items under J1
7 through J4, thank you.

8 MR. HELLER: Thank you.

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REPORTER'S CERTIFICATE

State of California)
) ss
County of Sacramento)

I, JULI PRICE JACKSON, Hearing Reporter for the California State Board of Equalization certify that on MARCH 25, 2010 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 5 constitute a complete and accurate transcription of the shorthand writing.

Dated: MAY 2, 2010



JULI PRICE JACKSON

Hearing Reporter

